

## Message Text

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PAGE 01 USUN N 03411 242149Z

71

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 OIC-02 AF-08 ARA-06 EA-07 EUR-12 NEA-10 /160 W  
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TO SECSTATE WASHDC PRIORITY 8836

C O N F I D E N T I A L USUN 3411

FROM LOS DEL

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: INFORMAL PLENARY ON DISPUTE SETTLEMENT  
AUGUST 23

1. INFORMAL PLENARY AUGUST 23 COMPLETED ARTICLES 16  
(APPLICABLE LAW) AND 17 (BINDING FORCE OF DECISIONS) AND  
BEGAN ARTICLE 18 (EXCEPTIONS).

2. BAHRAIN COMMENTED ON ARTICLE 16 ALONG LINES OF ISRAELI  
CRITICISMS REPORTED SEPT-EL. QATAR MADE A LONG THEORETICAL  
STATEMENT ON THE VARIOUS SOURCES OF INTERNATIONAL LAW THAT  
MIGHT BE APPLICABLE TO A DISPUTE UNDER THE CONVENTION AND  
SUPPORTED THE RETENTION OF THE REFERENCE TO OTHER RULES  
OF INTERNATIONAL LAW, IN ADDITION TO THE PROVISIONS OF THE  
CONVENTION. THE UK SUGGESTED DELETING ARTICLES 16 AND 17,  
ARGUING THAT THE CONVENTION WILL OBVIOUSLY BE APPLIED,  
THAT IT INCORPORATES OTHER APPLICABLE INTERNATIONAL LAW  
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PAGE 02 USUN N 03411 242149Z

IN MANY OF ITS PROVISIONS, AND THAT ARTICLE 17 IS TOO

SIMPLIFIED TO BE USEFUL (UK ALSO BACKTRACKED TO INDICATE THAT, CONTRARY TO ITS PREVIOUS STATEMENT, ARTICLE 10 IS NECESSARY TO THE TEXT). THE USSR DEFENDED MOST OF THE EXISTING TEXT OF ARTICLE 16 IN THE INTEREST OF A PRAGMATIC, NON-ACADEMIC APPROACH. US SUPPORTED INCLUSION OF OTHER RULES OF INTERNATIONAL LAW AND OTHER APPLICABLE LAW WITH QUALIFICATION THAT THESE OTHER SOURCES SHOULD BE CONSISTENT WITH THE CONVENTION.

3. ISRAEL OPENED THE DEBATE ON ARTICLE 17 WITH THE SUGGESTION THAT PARAGRAPH 1 SHOULD FOLLOW CLOSELY THE LANGUAGE OF ARTICLE 59 OF THE ICJ STATUTE WITH REFERENCE ONLY TO DECISION, NOT REPEAT NOT SETTLEMENTS EFFECTED OR INTERIM MEASURES, AND THAT PARA. 2 SHOULD BE INCORPORATED IN ARTICLE 16 AND FORMULATED ALONG THE LINES OF ARTICLE 38, PARAGRAPH 1 (D) OF THE ICJ STATUTE. ISRAEL ALSO PROPOSED INCLUDING AN EXPRESS PROVISION SOMEWHERE TO THE EFFECT THAT EACH PARTY UNDERTAKES TO COMPLY WITH THE DECISION OF A FORUM HAVING JURISDICTION UNDER ARTICLES 9 AND 10. NETHERLANDS PROPOSED DELETION OF ARTICLE 17 ON GROUNDS THAT PARAGRAPH 1 STATES WHAT IS INTERNATIONAL LAW IN ANY EVENT AND PARAGRAPH 2 RELATES ONLY TO SPECIAL PROCEDURES, WHICH SHOULD BE UNITED SO THAT THEY WILL BECOME JUDICIAL IN CHARACTER, ON AN EQUAL FOOTING WITH THE OTHER PROCEDURES. INDIA SUPPORTED PARAGRAPH 1 WITH REFORMULATION SUGGESTED BY ISRAEL AND DELETION PARAGRAPH 2 BECAUSE THE CONCEPT OF PRECEDENT CREATES JURISPRUDENTIAL DIFFICULTIES. SWITZERLAND ATTACKED IMPLICATION IN PARAGRAPH 2 THAT DECISIONS OF FORA OTHER THAN SPECIAL PROCEDURES HAVE PRECEDENTIAL EFFECT ON GROUND THAT CONCEPT OF PRECEDENT IS PROBABLY INCOMPATIBLE WITH ICJ STATUTE OR BASIC ARBITRATION RULES, AND AT MOST COULD BE A SUBSIDIARY SOURCE OF LAW IN ARTICLE 16.

4. ECUADOR, ITALY, AUSTRALIA, USSR, FRANCE, BULGARIA, AND TUNISIA SUPPORTED DELETION OF ARTICLE 17, THOUGH SOME COULD GO ALONG WITH RETENTION OF PARAGRAPH 1 LIMITED TO DECISIONS AND REFORMULATED ALONG THE LINES

CONFIDENTIAL

PAGE 03 USUN N 03411 242149Z

OF THE ICJ STATUTE. YUGOSLAVIA AND TUNISIA THOUGHT PARAGRAPH 2 DEPENDED ON DECISIONS YET TO BE TAKEN WITH RESPECT TO SPECIAL PROCEDURES.

5. ICELAND OPENED DEBATE ON ARTICLE 18 WITH UNEQUIVOCAL STATEMENT THAT RESOURCES IN THE ECONOMIC ZONE MUST NOT BE SUBJECT TO COMPULSORY DISPUTE SETTLEMENT OR ELSE THE SOVEREIGN RIGHTS GIVEN TO THE COASTAL STATE BY PART II

WOULD BE TAKEN AWAY BY PART IV. THE NETHERLANDS  
OBJECTED TO THE CONCEPT OF ARTICLE 18, PARAGRAPH 1  
INSOFAR AS IT INVOLVES A CONFUSION OF SUBSTANTIVE AND  
JURISDICTIONAL CONCEPTS. NETHERLANDS POINTED OUT THAT  
NO STATE EXERCISES SOVEREIGNTY OR EXCLUSIVE RIGHTS OVER  
THE ECONOMIC ZONE AS SUCH, AND THAT THERE ARE RIGHTS  
BOTH FOR COASTAL AND OTHER STATES THERE THAT COULD  
GIVE RISE TO DISPUTES. HE OPPOSED EXCLUSION OF ALL  
DISPUTES IN THE ZONE A PRIORI AND SUGGESTED A NEW  
ARTICLE 18, PARAGRAPH 1 WHICH WOULD EXEMPT FROM DISPUTE  
SETTLEMENT PROCEDURES DISPUTES RELATING TO THE  
EXERCISE BY A COASTAL STATE OF ITS RIGHTS AND JURIS-  
DICTION IN RESPECT OF ITS TERRITORIAL SEA OR ITS  
ECONOMIC ZONE OR ITS CONTINENTAL SHELF EXCEPT WHERE IT  
IS CLAIMED THAT THE COASTAL STATE HAS (1) EXCEEDED  
ITS RIGHTS OR JURISDICTION, (2) NOT COMPLIED WITH ITS  
OBLIGATIONS UNDER THE CONVENTION, (3) INFRINGED  
THE RIGHTS OR JURISDICTION OF ANOTHER STATE, OR (4)  
ABUSED ITS RIGHTS OR JURISDICTION TO THE DETRIMENT  
OF ANOTHER STATE.

6. PROCEDURALLY, INFORMAL PLENARY WILL CONCENTRATE ON  
ARTICLE 18, PARAGRAPH 1 FIRST AND THEN CONCENTRATE ON  
THE REST OF ARTICLE 18.  
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